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6 Attorneys for Plaintiff
United States of America

7 UNITED STATES DISTRICT COURT
8
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ENRIQUE VASQUEZ-VERGARA,

14 Defendant.

) Criminal Case No. 08-CR-1189-JAH

) DATE: May 19, 2008

) TIME: 8:30 a.m.

)
) **UNITED STATES' NOTICE OF MOTIONS
AND MOTIONS FOR:**

) **(1) FINGERPRINT EXEMPLARS**

) **(2) RECIPROCAL DISCOVERY**
15)
16 _____)

17 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,
18 Karen P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney, and
19 hereby files its Motions for Fingerprint Exemplars and Reciprocal Discovery in the above-referenced
20 case. Said motions are based upon the files and records of this case together with the attached
21 memorandum of points and authorities.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **STATEMENT OF THE CASE**

4 On April 16, 2008, a one-count indictment was filed charging defendant Enrique Vasquez-
5 Vergara with a violation of Title 8, United States Code, Sections 1326(a) and (b). Defendant was
6 arraigned on the indictment on April 17, 2008 and entered a plea of not guilty.

7 **II**

8 **STATEMENT OF FACTS**

9 **A. Defendant's Apprehension**

10 On February 16, 2008, Border Patrol Agent C. Mehmel was performing linewatch duties near
11 Campo, CA, approximately 20 miles east of the Tecate, CA Port of Entry and one mile north of the
12 international border. At approximately 9:20 a.m., Agent Mehmel responded to a seismic sensor device
13 activation in the area. Agent Mehmel followed footprints leading along a foot trail from the sensor's
14 location, and he subsequently encountered five individuals hiding in the brush near the trail.

15 Agent Mehmel conducted field interviews of the five individuals. Defendant admitted to being
16 a citizen of Mexico without documents allowing him to enter or remain in the United States. At that
17 point, Agent Mehmel placed all five individuals under arrest.

18 At approximately 1:13 a.m. on February 17, Defendant received Miranda warnings and agreed
19 to answer questions. Defendant stated that he is a citizen of Mexico and that he did not possess any
20 documents allowing him to enter the United States. According to Defendant, he entered the United
21 States from Mexico on February 16, 2008 by crawling underneath the border fence.

22 **B. Defendant's Immigration History**

23 Defendant is a citizen of Mexico. On or about November 20, 1997, Defendant was removed
24 from the United States to Mexico pursuant to an Order of an Immigration Judge. Defendant
25 subsequently was removed from the United States to Mexico on August 18, 2004.

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C. Defendant's Criminal History

Defendant's criminal history includes the following convictions:

CONVICTION DATE	COURT	CHARGE	TERM
10/1/1990	CASC Santa Barbara	Residential Burglary (Penal Code § 459)	4 years prison
8/11/1999	CASC Ventura	Driving Under the Influence (Vehicle Code § 23152)	60 months probation
4/24/2001	CASC Santa Barbara	Petty Theft with Prior (Penal Code § 666)	364 days jail
2/2/2004	CASC Ventura	Under Influence of Controlled Substance (Health and Safety Code § 11550)	90 days jail
10/3/2005	USDC C. D. Cal	Illegal Entry (8 U.S.C. § 1325)	30 months prison

III**UNITED STATES' MOTIONS****A. Motion For Fingerprint Exemplars**

The Government requests that the Court order that Defendant make himself available for fingerprinting by the Government's fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). Identifying physical characteristics, including fingerprints, are not testimonial in nature, and the collection and use of such evidence would not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal of blood is not testimonial).

B. Motion For Reciprocal Discovery

The Government has and will continue to fully comply with its discovery obligations. To date, the Government has provided Defendant with 106 pages of discovery and one DVD, including reports of his arrest, his rap sheet, and copies of immigration and conviction documents.

1 The Government moves the Court to order Defendant to provide all reciprocal discovery to
2 which the United States is entitled under Federal Rules of Criminal Procedure 16(b) and 26.2.
3 Specifically, Rule 16(b)(1) requires Defendant to disclose to the United States all exhibits, documents
4 and reports of testing or examination which Defendant intends to use in his case-in-chief at trial and a
5 written summary of the names, anticipated testimony, and bases for opinions of experts the defendant
6 intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

7 **IV**

8 **CONCLUSION**

9 For the foregoing reasons, the Government respectfully requests that the Court grant its motions.

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11 DATED: April 28, 2008.

Respectfully submitted,

12 Karen P. Hewitt
13 United States Attorney

14 s/ David D. Leshner
15 DAVID D. LESHNER
16 Assistant U.S. Attorney
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 08-CR-1189-JAH
)	
Plaintiff,)	
)	
v.)	
)	CERTIFICATE OF SERVICE
ENRIQUE VASQUEZ-VERGARA,)	
)	
Defendant.)	

IT IS HEREBY CERTIFIED THAT:

I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES NOTICE OF MOTIONS AND MOTIONS FOR FINGERPRINT EXEMPLARS AND RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Leila Morgan, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 28, 2008.

/s/ David D. Leshner
DAVID D. LESHNER